

## RESPONSE

Examiner: GRAHAM, Andrew R.

Serial No. 10/796,199

Atty. Docket No.: 43689.0161600

**REMARKS/ARGUMENTS**

Applicant acknowledges receipt of the above-reference Office Action. Applicant thanks the Examiner for withdrawing the objection to the drawings and the rejection under 35 U.S.C. §112, second paragraph and for withdrawing the objection to the figures. Applicant respectfully traverses the remaining rejections in their entirety. Claim 9 has been canceled, leaving Claims 1-8 and 10-19 currently pending in the instant application. Claims 1, 8, 10, 12, and 14 are amended herein.

The Examiner rejected Claims 1-2, 14-15, and 19 under 35 U.S.C. §103(b) as being anticipated by Oyaba et al, U.S. Patent No. 4,991,687 ("Oyaba"). The Examiner asserts that the conceptual "dividing" of the reproduced frequency range as taught by Oyaba does not provide a mutual or explicit correlation to the frequency ranges reproduced by the first pair of drivers and the second pair of drivers. Rather, because Oyaba implements the frequency division through the use of high and low pass filters, and because the cutoff frequency of a filter does not attenuate entirely the frequencies beyond the cutoff frequencies, the "subsequent pair" of drivers in Oyaba reproduces a subset of the frequency band output by the first pair of drivers. Applicant respectfully traverses the Examiner's interpretation of Oyaba. However, in an effort to further clarify Applicant's invention, Applicant has amended independent Claims 1 and 14 to further recite that the first frequency band and the second frequency band comprise a common frequency band at a common level of attenuation. As the Examiner admitted, in Oyaba the frequencies beyond the cutoff frequencies of the respective high and low pass filters are attenuated by an increasing amount (page 3, lines 2-3), thus any frequency bands shared by the drivers in Oyaba will not be at a common level of attenuation. The Court of Appeals for the Federal Circuit has consistently held that "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Lindemann Maschinenfabrik Gmbh v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984), and as the Examiner admits, Oyaba does not teach or suggest each and every element of Applicant's claimed invention. Applicant therefore respectfully requests that the Examiner withdraw the rejection of independent Claims 1 and 14, and their respective dependent claims for at least the reasons set forth above.

Claims 3, 5-7, and 17-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oyaba, in further view of U.S. Patent No. 4,653,606 to Flanagan ("Flanagan"). Applicant

## RESPONSE

Examiner: GRAHAM, Andrew R.

Serial No. 10/796,199

Atty. Docket No.: 43689.0161600

respectfully traverses the rejection. The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987). Applicant respectfully asserts that Claims 3, 5-7, and 17-19 are patentable for at least the reasons set forth above with respect to independent Claims 1 and 14, from which the rejected claims depend.

Claims 4, 8, 9, 11, and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oyaba, in further view of U.S. patent No. 5,359,664 to Steuben ("Steuben"). Applicant respectfully traverses the rejection. Claim 4 indirectly depends from independent Claim 1 and Claim 16 indirectly depends from Claim 14. Applicant respectfully asserts that Claims 4 and 16 are patentable for at least the reasons set forth above with respect to the independent claims from which they depend.

In rejecting Claim 8, the Examiner referred to the arguments set forth in the Office Action with respect to Claims 1 and 14. Applicant respectfully asserts that Claim 8 is patentable for at least the reasons set forth above with respect to Claims 1 and 14. Claim 11 depends from Claim 8, and Applicant asserts that it is patentable for at least the reasons set forth above with respect to Claim 8.

Claim 9 has been canceled, rendering the Examiner's rejection moot.

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over Oyaba in view of Steuben, and further in view of U.S. Patent No. 6,128,395 to DeVries ("DeVries"). Applicant respectfully traverses the rejection. Claim 10 depends from Claim 8. Applicant respectfully asserts that Claim 10 is patentable for at least the reasons set forth above with respect to Claim 8.

Claims 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oyaba in view of Steuben and further in view of Flanagan. Applicant respectfully traverses the rejection. Claim 12 depends from Claim 8, and Claim 13 depends from Claim 12. Applicant respectfully asserts that Claims 12 and 13 are patentable for at least the reasons set forth above with respect to Claim 8.

## RESPONSE

Examiner: GRAHAM, Andrew R.

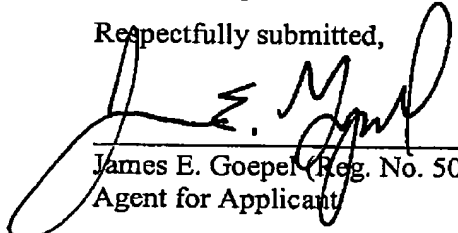
Serial No. 10/796,199

Atty. Docket No.: 43689.0161600

**CONCLUSION**

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is courteously requested to contact applicant's undersigned representative.

Respectfully submitted,

  
James E. Goepel (Reg. No. 50,851)  
Agent for Applicant

GREENBERG TRAURIG, LLP  
1750 Tyson's Boulevard  
Suite 1200  
McLean, VA 22102  
(703) 903-7536  
E-mail: goepelj@gtlaw.com

Filed: February 2, 2006